
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4571.1/16

ATTY/TYPIST: ML:akl

BRIEF DESCRIPTION: Establishing a state dairy groundwater discharge permit that is issued under the sole authority of state law.

1 AN ACT Relating to establishing a state dairy groundwater
2 discharge permit that is issued under the sole authority of state
3 law; amending RCW 90.48.260, 90.64.030, and 90.64.120; adding new
4 sections to chapter 90.48 RCW; creating a new section; and providing
5 an expiration date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48
8 RCW to read as follows:

9 (1)(a) The department, in consultation with the department of
10 agriculture, must establish a general permit, known as the state
11 dairy groundwater discharge permit, issued under the sole authority
12 of this chapter that is available to concentrated animal feeding
13 operations that discharge exclusively to groundwater.

14 (b) A concentrated animal feeding operation that discharges to
15 groundwater but that does not discharge to surface waters must be
16 eligible to obtain coverage under either:

17 (i) The permit established under this section; or

18 (ii) Any combined permit issued under both the authority of this
19 chapter and the authority of the federal clean water act, 33 U.S.C.
20 Sec. 1251 et seq.

1 (c) A concentrated animal feeding operation that discharges
2 exclusively to groundwater electing to obtain coverage under the
3 permit established under this section is not required to obtain
4 coverage under any combined permit issued under both the authority of
5 this chapter and the authority of the federal clean water act, 33
6 U.S.C. Sec. 1251 et seq.

7 (2) A concentrated animal feeding operation that stores manure,
8 stores manure effluent, or that applies manure nutrients to land must
9 be eligible to apply for coverage under the permit established under
10 this section.

11 (3)(a) The department shall issue the permit established under
12 this section in consultation with the department of agriculture. The
13 department shall administer the permit jointly with the department of
14 agriculture.

15 (b) The department and the department of agriculture must rely on
16 the processes and procedures adopted pursuant to section 2 of this
17 act in administering the permit established under this section.

18 NEW SECTION. Sec. 2. A new section is added to chapter 90.48
19 RCW to read as follows:

20 (1) The department and the department of agriculture shall
21 operate the permit program for the state dairy groundwater discharge
22 permit established in section 1 of this act via a memorandum of
23 agreement regarding the administration of permits and enforcement of
24 permit conditions for the state dairy groundwater discharge permit.

25 (2) The permit administration procedures adopted pursuant to this
26 section must:

27 (a) Establish protocols that identify manure lagoons and effluent
28 storage systems that are a significant risk to groundwater resources;
29 and

30 (b) Identify and facilitate the use of federal and state cost-
31 share programs to support the improvements to manure lagoons and
32 effluent storage systems identified in (a) of this subsection.

33 (3) The department of agriculture has primary responsibility for
34 inspections of concentrated animal feeding operations covered by the
35 state dairy groundwater discharge permit.

36 (4) For purposes of this section and section 1 of this act,
37 concentrated animal feeding operations has the same meaning as the
38 term is defined in 40 C.F.R. Sec. 122.23, as of the effective date of
39 this section, but is limited to operations that meet the definition

1 of concentrated animal feeding operations based on the number of
2 dairy cows.

3 **Sec. 3.** RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each
4 amended to read as follows:

5 (1) The department of ecology is hereby designated as the state
6 water pollution control agency for all purposes of the federal clean
7 water act as it exists on February 4, 1987, and is hereby authorized
8 to participate fully in the programs of the act as well as to take
9 all action necessary to secure to the state the benefits and to meet
10 the requirements of that act. With regard to the national estuary
11 program established by section 320 of that act, the department shall
12 exercise its responsibility jointly with the Puget Sound partnership,
13 created in RCW 90.71.210. The department of ecology may delegate its
14 authority under this chapter, including its national pollutant
15 discharge elimination permit system authority and duties regarding
16 animal feeding operations and concentrated animal feeding operations,
17 to the department of agriculture through a memorandum of
18 understanding. Until any such delegation receives federal approval,
19 the department of agriculture's adoption or issuance of animal
20 feeding operation and concentrated animal feeding operation rules,
21 permits, programs, and directives pertaining to water quality shall
22 be accomplished after reaching agreement with the director of the
23 department of ecology or shall be consistent with the requirements of
24 sections 1 and 2 of this act with respect to the administration of
25 the state dairy groundwater discharge permit. Adoption or issuance
26 and implementation shall be accomplished so that compliance with such
27 animal feeding operation and concentrated animal feeding operation
28 rules, permits, programs, and directives will achieve compliance with
29 all federal and state water pollution control laws. The powers
30 granted herein include, among others, and notwithstanding any other
31 provisions of this chapter or otherwise, the following:

32 (a) Complete authority to establish and administer a
33 comprehensive state point source waste discharge or pollution
34 discharge elimination permit program which will enable the department
35 to qualify for full participation in any national waste discharge or
36 pollution discharge elimination permit system and will allow the
37 department to be the sole agency issuing permits required by such
38 national system operating in the state of Washington subject to the
39 provisions of RCW 90.48.262(2). Program elements authorized herein

1 may include, but are not limited to: (i) Effluent treatment and
2 limitation requirements together with timing requirements related
3 thereto; (ii) applicable receiving water quality standards
4 requirements; (iii) requirements of standards of performance for new
5 sources; (iv) pretreatment requirements; (v) termination and
6 modification of permits for cause; (vi) requirements for public
7 notices and opportunities for public hearings; (vii) appropriate
8 relationships with the secretary of the army in the administration of
9 his or her responsibilities which relate to anchorage and navigation,
10 with the administrator of the environmental protection agency in the
11 performance of his or her duties, and with other governmental
12 officials under the federal clean water act; (viii) requirements for
13 inspection, monitoring, entry, and reporting; (ix) enforcement of the
14 program through penalties, emergency powers, and criminal sanctions;
15 (x) a continuing planning process; and (xi) user charges.

16 (b) The power to establish and administer state programs in a
17 manner which will ensure the procurement of moneys, whether in the
18 form of grants, loans, or otherwise; to assist in the construction,
19 operation, and maintenance of various water pollution control
20 facilities and works; and the administering of various state water
21 pollution control management, regulatory, and enforcement programs.

22 (c) The power to develop and implement appropriate programs
23 pertaining to continuing planning processes, area-wide waste
24 treatment management plans, and basin planning.

25 (2) The governor shall have authority to perform those actions
26 required of him or her by the federal clean water act.

27 (3) By July 31, 2012, the department shall:

28 (a) Reissue without modification and for a term of one year any
29 national pollutant discharge elimination system municipal storm water
30 general permit applicable to western Washington municipalities first
31 issued on January 17, 2007; and

32 (b) Issue an updated national pollutant discharge elimination
33 system municipal storm water general permit applicable to western
34 Washington municipalities for any permit first issued on January 17,
35 2007. An updated permit issued under this subsection shall become
36 effective beginning August 1, 2013.

37 (i) Provisions of the updated permit issued under (b) of this
38 subsection relating to new requirements for low-impact development
39 and review and revision of local development codes, rules, standards,
40 or other enforceable documents to incorporate low-impact development

principles must be implemented simultaneously. These requirements may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is later.

(ii) Provisions of the updated permit issued under (b) of this subsection related to increased catch basin inspection and illicit discharge detection frequencies and application of new storm water controls to projects smaller than one acre may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is later.

(4) By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of two years any national pollutant discharge elimination system municipal storm water general permit applicable to eastern Washington municipalities first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit for any permit first issued on January 17, 2007, applicable to eastern Washington municipalities. An updated permit issued under this subsection becomes effective August 1, 2014.

Sec. 4. RCW 90.64.030 and 2011 c 103 s 3 are each amended to read as follows:

(1) Under the inspection program established in RCW 90.64.023, the department may investigate a dairy farm to determine whether the operation is discharging pollutants or has a record of discharging pollutants into surface or ground waters of the state. Upon concluding an investigation, the department shall make a written report of its findings, including the results of any water quality measurements, photographs, or other pertinent information, and provide a copy of the report to the dairy producer within twenty days of the investigation.

(2) The department shall investigate a written complaint filed with the department within three working days and shall make a written report of its findings including the results of any water quality measurements, photographs, or other pertinent information. Within twenty days of receiving a written complaint, a copy of the findings shall be provided to the dairy producer subject to the

1 complaint, and to the complainant if the person gave his or her name
2 and address to the department at the time the complaint was filed.

3 (3) The department may consider past complaints against the same
4 dairy farm from the same person and the results of its previous
5 inspections, and has the discretion to decide whether to conduct an
6 inspection if:

7 (a) The same or a similar complaint or complaints have been filed
8 against the same dairy farm within the immediately preceding six-
9 month period; and

10 (b) The department made a determination that the activity that
11 was the subject of the prior complaint was not a violation.

12 (4) If the decision of the department is not to conduct an
13 inspection, it shall document the decision and the reasons for the
14 decision within twenty days. The department shall provide the
15 decision to the complainant if the name and address were provided to
16 the department, and to the dairy producer subject to the complaint,
17 and the department shall place the decision in the department's
18 administrative records.

19 (5) The report of findings of any inspection conducted as the
20 result of either an oral or a written complaint shall be placed in
21 the department's administrative records. Only findings of violations
22 shall be entered into the database identified in RCW 90.64.130.

23 (6) A dairy farm that is determined to be in violation of the
24 terms or conditions of the state dairy groundwater discharge permit,
25 or of an individual or general national pollution discharge
26 elimination system permit, or a significant contributor of pollution
27 based on actual water quality tests, photographs, or other pertinent
28 information is subject to the provisions of this chapter and to the
29 enforcement provisions of chapters 43.05 and 90.48 RCW, including
30 civil penalties levied under RCW 90.48.144.

31 (7) If the department determines that an unresolved water quality
32 problem from a dairy farm requires immediate corrective action, the
33 department shall notify the producer and the district in which the
34 problem is located. When corrective actions are required to address
35 such unresolved water quality problems, the department shall provide
36 copies of all final dairy farm inspection reports and documentation
37 of all formal regulatory and enforcement actions taken by the
38 department against that particular dairy farm to the local
39 conservation district and to the appropriate dairy farm within twenty
40 days.

1 (8) For a violation of water quality laws that is a first offense
2 for a dairy producer, the penalty may be waived to allow the producer
3 to come into compliance with water quality laws. The department shall
4 record all legitimate violations and subsequent enforcement actions.

5 (9) A discharge, including a storm water discharge, to surface
6 waters of the state shall not be considered a violation of this
7 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall
8 therefore not be enforceable by the department of ecology or a third
9 party, if at the time of the discharge, a violation is not occurring
10 under RCW 90.64.010 (17). In addition, a dairy producer shall not be
11 held liable for violations of this chapter, chapter 90.48 RCW,
12 chapter 173-201A WAC, or the federal clean water act due to the
13 discharge of dairy nutrients to waters of the state resulting from
14 spreading these materials on lands other than where the nutrients
15 were generated, when the nutrients are spread by persons other than
16 the dairy producer or the dairy producer's agent.

17 (10) As provided under RCW 7.48.305, agricultural activities
18 associated with the management of dairy nutrients are presumed to be
19 reasonable and shall not be found to constitute a nuisance unless the
20 activity has a substantial adverse effect on public health and
21 safety.

22 (11) This section specifically acknowledges that if a holder of a
23 general or individual national pollutant discharge elimination system
24 permit complies with the permit and the dairy nutrient management
25 plan conditions for appropriate land application practices, the
26 permit provides compliance with the federal clean water act and acts
27 as a shield against citizen or agency enforcement for any additions
28 of pollutants to waters of the state or of the United States as
29 authorized by the permit.

30 (12) This section specifically acknowledges that if a party
31 covered under the state dairy groundwater discharge permit complies
32 with the permit and the dairy nutrient management plan conditions for
33 appropriate land application practices, the permit provides
34 compliance with chapter 90.48 RCW.

35 (13) A dairy producer who fails to have an approved dairy
36 nutrient management plan by July 1, 2002, or a certified dairy
37 nutrient management plan by December 31, 2003, and for which no
38 appeals have been filed with the pollution control hearings board, is
39 in violation of this chapter. Each month beyond these deadlines that
40 a dairy producer is out of compliance with the requirement for either

1 plan approval or plan certification shall be considered separate
2 violations of this chapter ((90.64 RCW)) that may be subject to
3 penalties. Such penalties may not exceed one hundred dollars per
4 month for each violation up to a combined total of five thousand
5 dollars. The department has discretion in imposing penalties for
6 failure to meet deadlines for plan approval or plan certification if
7 the failure to comply is due to lack of state funding for
8 implementation of the program. Failure to register as required in RCW
9 90.64.017 shall subject a dairy producer to a maximum penalty of one
10 hundred dollars. Penalties shall be levied by the department.

11 **Sec. 5.** RCW 90.64.120 and 2003 c 325 s 4 are each amended to
12 read as follows:

13 (1) Nothing in this chapter shall affect the department of
14 ecology's authority or responsibility to administer or enforce the
15 national pollutant discharge elimination system permits for operators
16 of concentrated dairy animal feeding operations, where required by
17 federal regulations or to administer the provisions of chapter 90.48
18 RCW.

19 (2) The department of agriculture may take enforcement action as
20 provided in this chapter against a dairy found to be in violation of
21 the terms or conditions of the state dairy groundwater discharge
22 permit issued under chapter 90.48 RCW.

23 (3) Unless the department of ecology delegates its authority
24 under chapter 90.48 RCW to the department of agriculture pursuant to
25 RCW 90.48.260, and until any such delegation of authority receives
26 federal approval, the transfer specified in RCW 90.64.901 shall not
27 preclude the department of ecology from taking action related to
28 animal feeding operations or concentrated animal feeding operations
29 to protect water quality pursuant to its authority in chapter 90.48
30 RCW. Before taking such actions, the department of ecology shall
31 notify the department of agriculture.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.48
33 RCW to read as follows:

34 (1) By November 1, 2018, the department and the department of
35 agriculture shall submit a report to the appropriate policy and
36 fiscal committees of the legislature on the progress of the
37 implementation of the permit established pursuant to sections 1 and 2
38 of this act. This report must include recommendations for the

1 establishment or improvement of programs that allow for shared costs
2 of manure lagoon or effluent storage system improvements that are
3 required of concentrated animal feeding operations under sections 1
4 and 2 of this act.

5 (2) This section expires June 30, 2020.

6 NEW SECTION. **Sec. 7.** This act may be known and cited as the
7 dairy farm and groundwater resource sustainability act.

--- END ---